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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11

UNITED STATES OF AMERICA,

12

Plaintiff,

No. CR 04-00317 WHA

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v.

14

CHARLES EDWARD LEPP,

15

Defendant.

**ORDER DENYING
DEFENDANT'S REQUEST
TO CREDIT TIME ON
PRETRIAL RELEASE**

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Through a letter dated October 29 (Dkt. No. 447), defendant Charles Edward Lepp
17 requests credit for time served on pretrial release. For support, he cites to *Jones v. Cunningham*,
18 371 U.S. 236 (1963), as well as *Anderson v. Corall*, 263 U.S. 193, 196 (1923), for the contention
19 that "custody is custody" no matter the form of restriction. Both probation and the government
20 have since filed responses, asserting that the law does not permit defendant to count his time on
21 pretrial release toward imprisonment.

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Probation and the government are correct. Under 18 U.S.C. 3585(b), "[a] defendant shall
23 be given credit toward the service of a term of imprisonment for any time he has spent in *official*
24 *detention* prior to the date the sentence commences -- (1) as a result of the offense for which the
25 sentence was imposed; or (2) as a result of any other charge for which the defendant was arrested
26 after the commission of the offense for which the sentence was imposed; that has not been
27 credited against another sentence" (emphasis added). Albeit in the context of the Bail Reform
28 Act of 1984, the United States Supreme Court has explained that Section 3585(b)'s use of
"official detention" refers to "defendants who were detained in a 'penal or correctional

1 facility . . . and who were subject to [the Bureau of Prisons'] control." *Reno v. Koray*, 515 U.S.
2 50, 58–59 (1995). Because defendant was on pretrial release during the time for which he now
3 seeks credit, he was not in "official detention" within the meaning of Section 3585(b). Nor do
4 defendant's cited authorities offer him relief, as those decisions fail to discuss Section 3585(b) or
5 the issue of crediting time previously served.

6 Accordingly, defendant's request is **DENIED**.

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8 **IT IS SO ORDERED.**

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10 Dated: December 2, 2013.

11 
12 WILLIAM ALSUP
13 UNITED STATES DISTRICT JUDGE